

HOUSE BILL NO. 29

INTRODUCED BY M. NOENNIG

BY REQUEST OF THE LAW, JUSTICE, AND INDIAN AFFAIRS INTERIM COMMITTEE

A BILL FOR AN ACT ENTITLED: "~~AN ACT ELIMINATING AN INTERNAL CONFLICT AND A REDUNDANT SECTION OF LAW REGARDING LANDLORD LIABILITY FOR CERTAIN DAMAGES TO A TENANT; AND REPEALING SECTION~~ CONFLICTS IN THE LAW AND CLARIFYING THE RIGHTS AND DUTIES OF A LANDLORD AND TENANT WITH REGARD TO THE RETURN OF THE SECURITY DEPOSIT OF A DEPARTING TENANT; AND AMENDING SECTIONS 70-25-202 AND 70-25-205, MCA."

WHEREAS, section 70-25-205, MCA, contains two statements that are in direct conflict with one another; and

WHEREAS, in 1993, the Legislature eliminated the double damages penalty for wrongful withholding of a security deposit; and

WHEREAS, before that penalty was removed, section 70-25-205, MCA, provided that if a tenant failed to furnish a new address, then the landlord was not liable for the double damages, but was still required to pay the tenant the actual amount owed; and

WHEREAS, the 1993 legislation amended that section in a way that both relieved a landlord of liability to pay damages while at the same time provided that a tenant could not be barred from recovering those damages; and

WHEREAS, section 70-25-204, MCA, provides that a tenant is entitled to recover damages.

THEREFORE, section 70-25-205, MCA, as it was amended in 1993, is redundant as well as conflicting.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

~~NEW SECTION. Section 1. Repealer. Section 70-25-205, MCA, is repealed.~~

SECTION 1. SECTION 70-25-202, MCA, IS AMENDED TO READ:

"70-25-202. List of damages and refund -- delivery to departing tenant. (1) Every landlord, within

1 30 days subsequent to the termination of a tenancy or within 30 days subsequent to a surrender and
2 acceptance of the leasehold premises, whichever occurs first, shall provide the departing tenant with a
3 written list of any rent due and any damage and cleaning charges, brought after the provisions of
4 70-25-201 have been followed, with regard to the leasehold premises that the landlord alleges are the
5 responsibility of the tenant. Delivery of ~~such the~~ list ~~shall~~ must be accompanied by payment of the
6 difference, if any, between the security deposit and the permitted charges set forth in 70-25-201. Delivery
7 ~~shall must~~ be accomplished by mailing the list and refund to ~~the tenant's last-known address or the new~~
8 address provided by the tenant or, if a new address is not provided, to the tenant's last-known address.

9 (2) If after inspection there are no damages to the premises, no cleaning required, and no rent
10 unpaid and if the tenant can demonstrate that no utilities are unpaid by the tenant, the landlord shall return
11 the security deposit within 10 days by mailing it to the new address provided by the tenant or, if a new
12 address is not provided, to the tenant's last-known address.

13 (3) It is not a wrongful withholding of security deposit funds if the landlord mails the funds to the
14 last-known address of a tenant who has departed and the tenant does not receive the funds because the
15 tenant has not given the landlord the tenant's new address, but the landlord remains liable to the tenant
16 for the amount due the tenant FOR A PERIOD OF 18 MONTHS."

17

18 **SECTION 2. SECTION 70-25-205, MCA, IS AMENDED TO READ:**

19 **"70-25-205. Failure of departing tenant to furnish new address. Failure** ~~SUBJECT TO 70-25-202(3),~~
20 ~~FAILURE FAILURE~~ by the departing tenant to provide the landlord with a new address in writing upon
21 termination of the tenancy or upon surrender and acceptance of the leasehold premises, whichever occurs
22 first, ~~relieves the landlord from liability as imposed by 70-25-204. The failure may not, however, does not~~
23 bar the tenant from recovering the actual amount owing to the tenant by the landlord."

24

- END -